

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>STEVEN E. EDWARDS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>1:11CV77</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
<b>et al.,</b>	)	
	)	
<b>Defendant(s).</b>	)	

**ORDER AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff, Steven E. Edwards, has submitted a *pro se* civil rights complaint under 28 U.S.C. § 1331 and *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Plaintiff names the United States of America and the Department of Justice as Defendants. He alleges that he was wrongfully indicted and convicted of fraud-related charges in this Court [1:05CR265-1] and he seeks more than \$10,000,000 in damages from the government.

Because Plaintiff is “a prisoner seek[ing] redress from a governmental entity or officer or employee of a governmental entity,” this Court has an obligation to “review” this complaint. 28 U.S.C. § 1915A(a). “On review, the court shall . . . dismiss the complaint, or any portion of the complaint, if [it] – (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

Applicable to this case, a plaintiff “fails to state a claim upon which relief may be granted,” 28 U.S.C. § 1915A(b)(1), when the complaint does not “contain sufficient *factual matter*, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, \_\_\_, 129 S. Ct. 1937, 1949 (2009) (emphasis added) (internal citations omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of “entitlement to relief.”’” *Id.* (quoting *Twombly*, 550 U.S. at 557). This standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* In other words, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*<sup>1</sup> The Court may also anticipate affirmative

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<sup>1</sup>Although the Supreme Court has reiterated that “[a] document filed *pro se* is to be liberally construed and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotation marks omitted), the United States Court of Appeals for the Fourth Circuit has “not read *Erickson* to undermine *Twombly*’s requirement that a pleading contain more than labels and conclusions,” *Giarratano v. Johnson*, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (internal quotation marks omitted) (applying *Twombly* standard in dismissing *pro se* complaint). *Accord Atherton v. District of Columbia Off. of Mayor*, 567 F.3d 672, 681-82 (D.C. Cir. 2009) (“A *pro se* complaint . . . ‘must be held to less stringent standards than formal pleadings drafted by lawyers.’ But even a *pro se* complainant must plead ‘factual matter’ that permits the court to infer ‘more than the mere possibility of misconduct.’” (quoting *Erickson*, 551 U.S. at 94, and *Iqbal*, 129 S. Ct. at 1950, respectively)), *cert. denied*, \_\_\_ U.S. \_\_\_, No. 09-8739, 2010 WL 286406 (2010), and *cert. denied*, \_\_\_ U.S. \_\_\_, No. 09-889, 2010 WL 285700 (2010).

defenses which are clear on the face of the complaint. *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); *Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 954 (4th Cir. 1995)(court may apply common sense and reject fantastic allegations and/or rebut them with judicially noticed facts).

Plaintiff cannot bring his current complaint because, through the allegations in it, he is attempting to undermine his criminal convictions in this Court. In fact, the entire basis for the complaint is that he was wrongfully prosecuted and convicted. Plaintiff cannot proceed on such a claim without first showing that his convictions have been reversed on direct appeal, expunged by Executive Order, or finally called into question by a federal court through the issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477 (1994). Plaintiff fails to do so and the Court's own case file in his criminal case reveals that his convictions still stand. Therefore, dismissal is proper.

Plaintiff has not paid the applicable filing fee or asked to proceed *in forma pauperis*. However, he is not entitled to further proceed as a pauper. *In forma pauperis* status shall be granted for the sole purpose of entering this Order and Recommendation.

**IT IS THEREFORE ORDERED** that *in forma pauperis* status be granted for the sole purpose of entering this Order and Recommendation.

**IT IS RECOMMENDED** that this action be dismissed pursuant to 28 U.S.C. § 1915A for failing to state a claim upon which relief may be granted.

This the 2nd day of February, 2011.

/s/ P. Trevor Sharp

United States Magistrate Judge